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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 KEITH THOMPSON,

5 Plaintiff,

6 v.

7 13 CV 1991 (JGK)

8 POLICE OFFICER RODRIGUEZ, et
9 al,

10 Defendants.

11 -----x
12 New York, N.Y.
13 August 8, 2013
14 4:30 p.m.

15 Before:

16 HON. JOHN G. KOELTL,

17 District Judge

18 APPEARANCES

19 KEITH THOMPSON
20 Plaintiff pro se for

21 NEW YORK CITY LAW DEPARTMENT
22 Interested party
23 ALISON GAINFORT MOE
24 Assistant Corporation Counsel

25

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1 (Case called)

2 (In chambers; via speakerphone)

3 THE DEPUTY CLERK: This is the matter of Thompson v.
4 Rodriguez. Will all parties state who they are for the record.5 MR. THOMPSON: Mr. Keith Thompson, pro se plaintiff,
6 residing at 50-14 Broadway, Woodside, New York, apartment 4D as
7 in David, Zip code 11377.8 MS. MOE: Good afternoon, your Honor. Allison Moe
9 Assistant Corporation Counsel of the New York City Law
10 Department. With me is Morgan Koontz, also from the law
11 department.12 THE COURT: Hello. This is Judge Koeltl. I have you
13 on the speakerphone. I have a court reporter present. The
14 defense counsel should obtain a copy of the transcript and
15 provide it to the plaintiff. I'm here with my deputy clerk and
16 two of my law clerks. This case was just filed and it comes
17 with an order to show cause for a preliminary injunction and
18 temporary restraining order. Now I always listen to the
19 parties when I get an application for a temporary restraining
20 order. And I'll listen to the parties. Usually at the first
21 conference where there's a request for a temporary restraining
22 order I listen as to why there's a need for a temporary
23 restraining order and I set down a schedule for the preliminary
24 injunction.

25 Now, I've read the papers, including the complaint and

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1 the order to show cause. It's not clear to me, Mr. Thompson,
2 whether you've set out sufficient facts and all the facts that
3 you would like to set out in support of a motion for a
4 preliminary injunction. There's a one-page affidavit and the
5 gist of the affidavit is that you were stopped once and that
6 therefore you want an injunction against being stopped again.
7 I don't know whether there's more that you wish to say in
8 support of an application for a preliminary injunction, but it
9 wouldn't appear on the basis of the papers that you could get a
10 temporary restraining order or a preliminary injunction because
11 all that you have set out is that on one occasion you were
12 stopped and had an experience with the police and actually all
13 of the details of that experience are really set out in your
14 complaint rather than in an affidavit.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: But this is one incident, and in order to
17 get a preliminary injunction you'd have to show a likelihood of
18 success on the merits and irreparable injury if the preliminary
19 injunction weren't granted or a substantial question going to
20 the merits and a balance of equities on your side. But when
21 the basis for the complaint is that you were stopped once, it
22 would raise questions as to whether you could show that, for
23 example, it was likely that you will be stopped again between
24 now and the time when the case can be heard. On the basis of
25 it, you know, there would be some questions of whether you

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1 would be stopped and if you were stopped whether it would be
2 the same police officers who would stop you and whether
3 particularly with the pendency of a case out there the police
4 officers would act towards you in a way that would be
5 objectionable.

6 MR. THOMPSON: May I speak, your Honor?

7 THE COURT: Yes, sure.

8 MR. THOMPSON: Honorable Judge, the reason why I
9 submitted this application is because since then I've also been
10 stopped by various officers from the same exact precinct. I
11 have two tickets pending now from officers from this precinct.
12 It's not just that particular officer that stopped me that
13 particular date on February 3rd, it's other officers that are
14 constantly giving me tickets, unnecessary tickets, okay, and I
15 have a couple of them now that is pending that I have to go to
16 court for. And this is why I submitted this. I mean, all this
17 is from the same precinct and it's just that this question,
18 it's in the Bronx, nowhere else, and that's the reason why I
19 submitted this. The reason why I haven't put this in an
20 injunction is just the fact that it's just tickets but I know
21 it's harassment from the police force, from this particular
22 precinct, all of them are from this particular precinct.

23 THE COURT: If you wanted to proceed with an
24 application for a preliminary injunction you really should give
25 a set of papers that show what the basis for your application

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1 for the preliminary injunction is. You say you haven't put
2 them in these papers, okay. If you want a preliminary
3 injunction you really have to give me a set of papers which set
4 out the basis for a preliminary injunction. So far, you know,
5 there is no basis for a temporary restraining order and you
6 seem to agree that you haven't yet set the facts out for a
7 preliminary injunction. So I would give you the opportunity to
8 do that, you know. You could make a motion for a preliminary
9 injunction and defendants would respond and you would reply.

10 MR. THOMPSON: Yes.

11 THE COURT: Do you want to do that?

12 MR. THOMPSON: So you would like for me to resubmit
13 this with all facts, correct? Okay.

14 THE COURT: Yes. What I would do is to say that the
15 application for a preliminary injunction and temporary
16 restraining order dated August 7, 2013 is denied without
17 prejudice to renewal and -- it's a high burden to get a
18 preliminary injunction. You understand that, Mr. Thompson,
19 right?

20 MR. THOMPSON: Yes.

21 THE COURT: Okay. But if you want to make that motion
22 you just tell me when you want to make it and I'll set up a
23 schedule. But you've got to -- it would be important for you
24 to submit an affidavit explaining the bases for the motion and
25 you really should submit a memo in support of the preliminary

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1 injunction, too, explaining why you believe that you are
2 entitled to a preliminary injunction. You have to explain to
3 me why there is a likelihood that you will succeed or at the
4 very least substantial questions going to the merits and why
5 there would be irreparable injury to you if the injunction were
6 not granted and why there's a balance of equities in your
7 favor.

8 The other thing is, if you say it's not the officers
9 who are the defendants who are giving you the additional
10 tickets there would be the question of what sort of injunction
11 it is that you're seeking. It would be unusual to issue an
12 injunction which says the Police Department can't give you any
13 tickets. That would give you the ability to simply speed
14 without ticketing, and that would be highly unusual to get an
15 injunction like that. Do you follow?

16 MR. THOMPSON: I understand that correctly, sir.

17 THE COURT: Okay. So you want to go forward, though,
18 with a motion for a preliminary injunction?

19 MR. THOMPSON: Yes. I will resubmit it and I will
20 call your office, your clerk's office and set up a date where I
21 could possibly come in.

22 THE COURT: No, no. What you should do is, I can set
23 up the schedule now. You just tell me when you want to submit
24 your motion for a preliminary injunction and I'll give the
25 defendants an opportunity to respond and give you an

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1 opportunity to reply.

2 MR. THOMPSON: So you're going to set up a court date,
3 is that correct, sir?

4 THE COURT: I want to set up a date for you to submit
5 a motion for a preliminary injunction if that's what you want
6 to do. Do you follow?

7 MS. MOE: Your Honor, if I may briefly be heard.

8 THE COURT: Sure.

9 MS. MOE: Thank you, your Honor. None of the
10 defendants have been served in this matter so my office doesn't
11 yet represent anyone. I do think it's premature to entertain
12 an application for a temporary restraining order. Secondly,
13 the complaint itself doesn't seek injunctive relief so I don't
14 see any connection between an application for a temporary
15 restraining order and the matter presently at bar.

16 THE COURT: Okay. That's a good point.

17 MR. THOMPSON: Your Honor, may I speak in regards to
18 that?

19 THE COURT: Sure.

20 MR. THOMPSON: Yes. I received two memos from the
21 counsel, Ms. Moe, regarding -- one memo I received she states
22 that she's representing these two officers. Previously before
23 your clerk called me earlier she said there's a possibility
24 that she will be representing them and she has an argument
25 because you had already granted that the marshals serve these

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1 two officers and which the marshals were told to serve them
2 through the Corporation Counsel as opposed to the actual
3 precinct where they are employed at, so she's arguing the fact
4 that they were served at the Corporation Counsel's office like
5 you said as opposed to the actual workplace where they worked
6 at. But this was a motion that you had granted that the
7 marshals serve them and that's the way they chose to serve
8 them.

9 THE COURT: Okay, hold on one moment, please.

10 MS. MOE: Your Honor, I believe the relevant order is
11 docket entry number 10.

12 THE COURT: Okay. Hold on.

13 (Pause)

14 THE COURT: Okay. Mr. Thompson, did you receive the
15 July 31 order from me with respect to the issue of service?

16 MR. THOMPSON: Yes, I did, sir. Is that the one you
17 informed me that you granted the marshals to serve them.

18 THE COURT: It says that the officers should be served
19 at Patrol Borough Bronx Task Force, 1278 Sedgewick Avenue in
20 the Bronx and it says that the pro se office will provide you
21 with new service packages for the individual defendants and the
22 plaintiff should fill in the above address for the individual
23 officer defendants and return the completed packages to the pro
24 se office so that the marshals can serve those defendants.

25 MR. THOMPSON: I did exactly that, sir, but the

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1 marshals office decided to serve the officers at the
2 Corporation Counsel. Why, I have no idea but that's what they
3 chose to do.

4 THE COURT: Wasn't that earlier? Was it in response
5 to the -- this is the order dated July 31. So after July 31
6 the pro se office should have provided you with new service
7 packages for the individual defendants, okay?

8 MR. THOMPSON: Yes.

9 THE COURT: And you then should complete the service
10 packages and return them to the pro se office and the pro se
11 office will assure that they're then given to the marshals so
12 that the individual defendants can be served at the Patrol
13 Borough Bronx Task Force, 1278 Sedgewick Avenue.

14 MR. THOMPSON: So you'd like these officers to be
15 reserved, is that what you're saying, sir?

16 THE COURT: Yes. That's why I said didn't you get the
17 July 31 order?

18 MR. THOMPSON: No, I did not, sir.

19 THE COURT: Okay. Well, we will send another -- it
20 should have gone out to you --

21 MR. THOMPSON: The only order I received was the one
22 when you granted the order for the marshals to serve the two
23 officers.

24 MS. MOE: Your Honor, the docket indicates that it was
25 not mailed until Monday so I guess it's unlikely that it would

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1 have arrived by now.

2 THE COURT: We'll send another copy. And we'll check
3 to make sure that the pro se office is providing new service
4 packages for the individual defendants.

5 MR. THOMPSON: Okay.

6 THE COURT: So we'll send you another copy of the
7 order and we'll send you, we'll make sure that the pro se
8 office sends you the service packages for the individual
9 defendants.

10 MR. THOMPSON: Okay. So you want me to resubmit new
11 complaints, new complaints and everything else, correct?

12 THE COURT: Well, you know, this is an opportunity, by
13 the way, if you want to amend your complaint to include any
14 other allegations or any requests for injunctive relief that
15 you file an amended complaint and that the service packages
16 that you provide to the pro se office include an amended
17 complaint so that you serve the summons and amended complaint
18 on the police officer defendants. If you want to amend your
19 complaint.

20 MR. THOMPSON: I'm fine with my complaint, sir.

21 THE COURT: Oh, okay. Ms. Moe pointed out that it
22 doesn't seek injunctive relief, it only seeks damages, so she
23 says it's hard to get a preliminary injunction on a case which
24 is not seeking injunctive relief. But if you're satisfied with
25 your complaint, okay. I'm not ordering you to file an amended

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1 complaint.

2 MR. THOMPSON: Yes.

3 THE COURT: We'll make sure that you are provided with
4 another copy of the July 31 order and that you are provided by
5 the pro se office with service packages to be returned. The
6 marshals will then serve the individual defendants.

7 MR. THOMPSON: All right. One more question, your
8 Honor. The actual address where the officers are employed at
9 will be indicated in the memo as well, sir?

10 THE COURT: Yes, it's indicated in my July 31 order.
11 I mean, it's Patrol Borough Bronx Task Force, 1278 Sedgewick
12 Avenue, Bronx, New York 10452.

13 MR. THOMPSON: Okay.

14 THE COURT: And, by the way, do we have your correct
15 address? 50-14 Broadway, apartment 4D, Woodside, New York,
16 11377?

17 MR. THOMPSON: That's correct, sir.

18 THE COURT: Okay. So, that will, if you follow that
19 process then the defendants will be served by the marshal where
20 they work. Then the next question is they've got to be served
21 by the marshal. After they're served if you want to bring on a
22 motion for a preliminary injunction you really should submit
23 more detailed papers.

24 MR. THOMPSON: Okay, sir.

25 THE COURT: Okay?

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1 MR. THOMPSON: I understand.

2 THE COURT: All right. Anything else for me today?

3 Ms. Moe? Ms. Moe, are you still there?

4 MS. MOE: Yes, thank you, your Honor. Just one item.

5 I would ask in the interests of expediting a resolution of this
6 matter that the Court direct plaintiff to provide a release
7 unsealing any records relating to this summons. I understand
8 that no parties have been served and we've not done any
9 discovery but in my experience records from the Court take some
10 time to obtain so if we start on that now it will shorten the
11 time necessary for discovery thus far.

12 MR. THOMPSON: Have you sent Mr. Thompson the
13 releases?

14 MS. MOE: I haven't yet had a chance to do so, but I
15 can do it today.

16 THE COURT: It would be hard for him to complete
17 something he doesn't have. And since you're taking the
18 position that you don't represent anyone yet, it's sort of hard
19 to require Mr. Thompson to start filling out forms for you.

20 MS. MOE: I completely understand, your Honor. I just
21 was suggesting this as a way of expediting the case. We have
22 no need for it at this time, but I thought that it might speed
23 things along.

24 THE COURT: Mr. Thompson?

25 MR. THOMPSON: Yes, your Honor. I mean, as we speak,

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1 counsel Moe has informed me that one minute she is representing
2 them, and one minute she's not representing them. I'm not sure
3 exactly who is representing these officers.

4 THE COURT: Well, no one yet because they haven't yet
5 been served. And so they haven't had, they're not required yet
6 to file an appearance. And so no one has yet appeared to
7 represent them.

8 Now, it's pretty clear that eventually the Corporation
9 Counsel will be representing them, I believe, unless there's
10 some conflict. But they haven't filed a notice of appearance
11 yet on behalf of those defendants. The docket sheet reflects
12 them as a, quote, interested party.

13 MR. THOMPSON: Yes.

14 THE COURT: So if you want to fill out releases to
15 unseal the criminal records you're welcome to do that. It may
16 save some time down the line, but you're not required to do
17 that. You can chat with Ms. Moe about this. You have her
18 telephone number, right?

19 MR. THOMPSON: No, I don't actually have her direct
20 number. I've seen her number on the memo that she sent me. Is
21 that your correct number, Ms. Moe?

22 MS. MOE: Yes.

23 MR. THOMPSON: Okay, then I have it.

24 THE COURT: Okay, you're welcome to talk and you're
25 welcome to try to expedite the proceedings.

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1 MR. THOMPSON: Okay, sir, I appreciate your time in
2 this matter.

3 MS. MOE: Thank you, your Honor.

4 MR. THOMPSON: Thank you, have a good evening.

5 THE COURT: Bye, now.

6 (Adjourned)

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